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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/025,299	12/19/2001	Santos H. Collado	PPC-817	3388

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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT PAPER NUMBER

3761

DATE MAILED: 05/20/2004

6

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary****Application No.**

10/025,299

**Applicant(s)**

COLLADO ET AL.

**Examiner**

Jacqueline F Stephens

**Art Unit**

3761

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-21 is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3.5</u> | 6) <input type="checkbox"/> Other: ____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1-10 are rejected under 35 U.S.C. 102(e) as being anticipated by Carstens et al. USPN 6582411. Applicant defines "drapeable" to mean having a flexural resistance of about 35 g or less as tested by the Modified Circular Bend Test, ASTM 4032-82 (page 3, lines 12-18).

As to claim 1, based on applicant's definition of drapeable, Carstens discloses an absorbent article comprising a first end, second end, and longitudinally extending first and second edges joining the first and second ends a layered portion comprising a body facing layer and a garment facing layer (Figures 1 and 4), wherein the article is

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drapeable. Carstens discloses a flexural resistance of about as tested by the Modified Circular Bend Test, ASTM 4032-82 (col. 3, lines 62-66 and col. 31, lines 30-34).

As to claims 2, 3, and 5, the body facing layer 28 comprises two layers – an apertured cellulosic tissue and a high loft topsheet material, the high loft material having a degree of hydrophilicity, and thus some absorbency (col. 10, lines 25-29 and 62-67; col. 11, lines 1-17).

As to claim 4, see col. 26, lines 15-21, SONTARA is well known in the art as a spunlaced rayon/poly nonwoven. For instance, Osborn USPN 5383869 teaches SONTARA is a spunlaced 70%/30% rayon/polyester fiber sheet (Osborn col. 8, lines 25-30).

As to claim 6, Carstens further discloses an absorbent layer 32.

As to claim 7, Carstens teaches an embodiment with a transfer layer 106 col. 25, lines 4-6.

As to claim 8, Carstens discloses the body facing layer comprises polyethylene (col. 13, lines 39-46).

As to claim 9, see Abstract.

As to claim 10, Carstens discloses at least one wing 36 extending from the longitudinal edges (Figure 2).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carstens et al. USPN 6582411. Carstens discloses various shapes and transverse and longitudinal dimensions are appropriate for his invention (col. 7, lines 19-46), with the napkin overall being smaller than conventional napkins. Carstens does not specifically disclose the napkin is shaped to fit into a thong. It would have been an obvious matter of design choice to provide the article with a crotch shaped to fit into a thong, since such a modification would have involved a mere change in the size of a

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component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

As to claim 12, Carstens discloses at least one wing 36 extending from the longitudinal edges (Figure 2).

6. Claims 13 and 14 rejected under 35 U.S.C. 103(a) as being unpatentable over Carstens in view of Datta et al. USPN 4801494. Carstens discloses the present invention substantially as claimed. However, Carstens does not disclose at least one layer comprising a color. Datta discloses an absorbent layer comprising a color for the benefits of masking certain absorbed materials with a resulting pleasant color (Datta col. 3, lines 39-48). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the absorbent of Carstens to have at least one colored layer for the benefits disclosed in Datta.

#### ***Allowable Subject Matter***

7. Claims 15-21 are allowed.


8. The following is an examiner's statement of reasons for allowance: The overall claimed combination of an absorbent article that is drapeable, according to applicant's definition as set forth in (page 3, lines 12-18) as cited above, and in combination with the specific claimed materials used to make the multi-layer absorbent structure is neither anticipated nor rendered obvious by the prior art of record.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (703) 308-8320. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703)305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jacqueline F Stephens   
Examiner  
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